

JACK J. GRYNBERG  
D.B.A. GRYNBERG PETROLEUM CO.

IBLA 88-668

Decided April 26, 1990

Appeal from a decision of the Colorado State Office, Bureau of Land Management, affirming issuance of Incident of Noncompliance and assessment of liquidated damages for drilling without approved application for permit to drill. SDR-CO-88-11.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Where an operator initiates drilling operations at 7 a.m. but his application for permit to drill is not approved by BLM until 4:20 p.m. the same day, BLM properly issues a notice of noncompliance for drilling without approval for a portion of 1 day, pursuant to 43 CFR 3163.1.

2. Administrative Authority: Estoppel--Estoppel--Federal Employees and Officers: Authority to Bind Government--Oil and Gas Leases: Civil Assessments and Penalties--  
Oil and Gas Leases: Incidents of Noncompliance

Verbal permission to drill from a BLM employee prior to approval by BLM of an application for permit to drill, even if established in the record, would not provide a defense to the issuance of an incident of noncompliance for drilling without approval, where such verbal permission is contrary to controlling Departmental regulations, knowledge of which is imputed to the operator.

3. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Where a minimum assessment of \$500 per day is mandated for drilling without approval under 43 CFR 3163.1(b)(2), BLM is not barred from correcting an incident of noncompliance to make an assessment of \$500 for a violation, representing the portion of 1 day that the violation existed.

APPEARANCES: Jack J. Grynberg, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Jack J. Grynberg, d.b.a. Grynberg Petroleum Company (appellant), has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 24, 1988, affirming issuance of an Incident of Noncompliance (INC) (No. 88-93) and assessment of \$500 in liquidated damages by the Little Snake Resource Area, BLM, for commencing drilling operations prior to the approval of an application for permit to drill (APD) the No. 2-24 well on oil and gas lease C-1727.

On June 2, 1988, appellant filed his APD seeking permission to drill the No. 2-24 well in sec. 24, T. 9 N., R. 91 W., sixth principal meridian, Moffat County, Colorado. 1/ After amendments of the APD by appellant and BLM's review of the APD, which included two visits to the proposed drill site, the Area Manager, Little Snake Resource Area, by memorandum dated June 27, 1988, recommended to the District Manager, Craig District, BLM, that the APD be approved.

At approximately 4:20 p.m. on July 6, 1988, the Acting District Manager approved the APD. The record indicates that appellant received a copy of the APD on July 7, 1988.

On July 11, 1988, BLM Inspector James T. Wood issued INC No. 88-83 to appellant for commencing drilling on the No. 2-24 well prior to approval of an APD. As originally issued, the INC stated that the violation had been discovered at "12:00 PM" on July 6, 1988, and described the gravity of the violation as minor. 2/ The INC stated that verbal approval had been granted to construct the drill pad prior to APD approval, but not to drill. It required appellant to provide BLM with a written statement within 30 days of receipt setting forth what action he would take in the future to ensure that the problem did not recur.

By letter dated August 3, 1988, the Area Manager notified appellant that there was a "procedural problem with" INC No. 88-83, and that this INC had been voided. BLM stated that, "since the noncompliance [noted in INC No. 88-83] did exist and the problem found was procedural, a new INC (88-93) has been issued." The new INC, which was issued on August 2, 1988, by Inspector Wood, noted the gravity of the violation as major and provided for an assessment of \$500, referencing 43 CFR 3163.1(b)(2). The time of the violation was amended on the new INC to 10 p.m., July 6, 1988, without explanation.

---

1/ The record indicates that the United States is the owner only of the mineral estate in sec. 24.

2/ The INC form indicates that time is reckoned on the "24-hour clock." Thus, the reference to "12:00 PM" is presumably to "12 noon."

On August 15, 1988, appellant, pursuant to 43 CFR 3165.3(b), requested a technical and procedural review by the State Director of INC Nos. 88-83 and 88-93. <sup>3/</sup> Also, on August 17, 1988, appellant responded to the new INC, stating: "It was a misunderstanding. From now on we won't even move a rig in unless the APD is in our hands."

In its August 1988 decision, the State Office affirmed the Resource Area Office's issuance of INC No. 88-93 and assessment of \$500. Appellant has appealed from the State Office's August 1988 decision.

In his statement of reasons, appellant argues that he should not be assessed for commencing drilling prior to approval of an APD because the question of whether he received verbal approval from BLM to commence operations on July 6, 1988, is unresolved. He maintains that he was given verbal approval and contends that issuance of INC No. 88-93 violates the legal principle of res judicata because, at the time of issuance of that INC, he had already taken corrective action in response to the earlier INC (No. 88-83) on July 13, 1988.

[1] It is undisputed that appellant commenced drilling operations with respect to the No. 2-24 well prior to approval of the subject APD.

In a document entitled "Notice of Spud" (which is actually a report of a July 28, 1988, telephone conversation), an employee of appellant related to BLM that the hole had been spudded at 7 a.m. on July 6, 1988. Appellant provided all of the daily drilling logs for the period from July 5 through 15, 1988. These logs indicate that appellant moved a drilling rig onto the site on July 5, 1988, and commenced drilling operations at 7 a.m. on July 6.

The timing of the approval of the APD is established by a July 22, 1988, document which contains two statements, one signed by the Acting District Manager and the other signed by three BLM employees. In his statement, the Acting District Manager states: "I signed the APD \* \* \* at approximately 4:20 pm on July 6, 1988." In their statement, the three BLM employees state: "The APD was signed, as witnessed, at approximately 4:20 pm on July 6, 1988." This is confirmed by the fact that appellant was not able to receive a copy of the APD until the next day when appellant picked it up.

Under 43 CFR 3162.3-1(c), an operator must submit to BLM for approval an APD for each well, and no drilling operations nor surface disturbances preliminary thereto may be commenced prior to the BLM's approval of the APD. Under 43 CFR 3163.1(b)(2), drilling without approval results in an

---

<sup>3/</sup> The record indicates that BLM, on Aug. 18, 1988, issued a bill for collection of the \$500 assessed in connection with issuance of INC No. 88-93 and that the bill was paid on Sept. 9, 1988.

assessment of a minimum of \$500 per day for each day that the violation existed, and BLM is expressly authorized to make assessments for days the violation existed prior to being discovered. Therefore, BLM's decision making the assessment of \$500 for the portion of 1 day (July 6, 1988) that appellant was in violation must be affirmed.

[2] Appellant attributes the commencement of drilling operations to the verbal approval purportedly given by a BLM employee prior to issuance of the approved APD, thus arguing, in effect, that BLM should be estopped from penalizing him for this violation. BLM concedes that the employee gave verbal approval to appellant, but states that it was limited to authorizing construction of the access road and well pad to be used in connection with the planned No. 2-24 well. 4/

BLM's assertions as to the limited nature of the verbal advice its employee gave, although disputed by appellant, are supported by the record, which indicates that the employee talked by telephone with appellant's operations manager on June 28 and 29, 1988. The record contains reports of those conversations, evidently prepared by the BLM employee. The report of the June 28 conversation indicates that it concerned "verbal approval to commence access road and well pad construction prior to APD approval." The report indicates that the BLM employee contacted the State Office and was told that "verbal approval prior to APD issuance \* \* \* is acceptable" so long as no activity commenced until the conclusion of the 30-day posting period provided for by section 17(f) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(f) (Supp. V 1987), on July 2, 1988. In the report of the June 29, 1988, conversation, the BLM employee stressed that he had provided appellant verbal approval only for access road and well pad construction, subject to certain conditions, including that no activity commence until July 2, 1988. The record also contains a July 6, 1988, memorandum to the file from another BLM employee corroborating that the first BLM employee had stated that he had granted verbal approval to construct location and stressed to appellant that the approved APD must be received prior to drilling. That appellant had simply misunderstood the BLM employee's verbal approval is indicated by a July 7, 1988, report of yet another telephone conversation on that date with appellant: "[H]e understood verbal to give appellant 'go ahead' (implying everything) and admitted a misinterpretation." Finally, Inspector Wood's statement in the original INC (88-83) that verbal approval had been granted to construct the drill pad prior to

---

4/ We must strongly question whether such limited approval advice was correct, in view of the clear statement in 43 CFR 3162.3-1(c) that no drilling operations nor surface disturbances preliminary thereto may be commenced prior to BLM's approval of the APD. See Noel Reynolds, 110 IBLA 74 (1989). However, this advice, even if erroneous, did not cause Grynberg any damage, as Grynberg was not cited for surface disturbances preliminary to drilling operations.

APD approval, but not to drill, illustrates his belief, as of July 11, 1988, that he had not verbally authorized commencement of drilling prior to approval of the APD.

We find from the above that BLM's employee did not misadvise appellant that it was permissible to begin drilling prior to the approval of the APD. Thus, there can be no question here of detrimental reliance on misinformation.

However, even assuming, as appellant contends, that the BLM employee verbally approved the commencement of drilling operations prior to approval of the subject APD, this advice was plainly erroneous. See 43 CFR 3162.3-1(c). It is well established that reliance on erroneous advice cannot relieve a party of the consequences imposed by a regulation. See Magness Petroleum Corp., 113 IBLA 214, 217 (1990); Chevron U.S.A., Inc., 108 IBLA 96, 98-101 (1989), and cases cited. Departmental regulation 43 CFR 1810.3(c) provides this warning: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law." This regulation was applied in Burton/Hawks, Inc. v. United States, 553 F.Supp. 86, 92 (D. Utah 1982):

Section 1810.3 establishes the principle that plaintiff's reliance on the erroneous statement of the district engineer could not estop the IBLA from denying a two-year extension of the lease where the lease did not qualify for the extension under the terms of the agreement or the [Mineral Lands Leasing Act]. The proposition that the erroneous statements of its employees do not bind the United States is well accepted in the case law. E.g., Federal Crop Ins. v. Merrill, 332 U.S. 380, 384, 68 S.Ct. 1, 3, 92 L.Ed. 10 (1947); United States v. California, 332 U.S. 19, 39 (1947); [5/] Clair R. Caldwell, et al., 42 IBLA 139, 141 (1979); Paul S. Coupey, 35 IBLA 112, 116 (1978). Thus, despite plaintiff's reliance on assurances made by the USGS district engineer, the IBLA was free to reach an independent decision on whether or not the lease expired by operation of law.

The employees of BLM have no authority to depart from the requirements of the regulations dealing with public lands. Further, all citizens are deemed to have knowledge of such regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Terra Resources, Inc., 107 IBLA 10, 13 (1989); William Perlman, 91 IBLA 208, 231-32, 93 I.D. 159, 172-73 (1986). Thus, even if appellant was erroneously advised by BLM that he could commence drilling prior to the issuance of the APD, he has not established that grounds exist for estopping the Government from enforcing the terms of this regulation.

---

5/ Parallel citations omitted.

Appellant also challenges BLM's authority to amend an INC on the basis that it violates the principle of res judicata. He notes that he complied with the original INC and asserts that this compliance should have ended the matter.

[3] As discussed above, 43 CFR 3163.1(b)(2) provides for a mandatory assessment of a minimum of \$500 per day for each day that drilling without approval occurs. BLM is afforded no leeway by this provision. Thus, insofar as the original INC failed to determine that the gravity of this violation was major and to make an assessment for it, it was improper. BLM could properly correct the first INC because, as noted above, it is not estopped by its errors from taking actions mandated by law.

We see no reason to bar BLM from amending an INC where the violation is such that there is no need to provide an abatement period in the INC. This type of amendment would be purely procedural and may be distinguished from BLM's amending an INC following compliance to require different or additional steps. In the latter case, the operator's compliance during the abatement period might rise to the level of good faith reliance, thus barring BLM from making the amendment. However, the present appeal pre-sents the former situation, as there was no need to provide an abatement period. 6/

Appellant challenges BLM's altering of the time of the violation on the amended INC. As explained by the Deputy State Director, Mineral Resources, in a Sept. 20, 1988, memorandum to the Regional Solicitor, BLM amended the time to 10 p.m. on July 6, 1988, because "that is when the Little Snake Resource Area office first became aware that appellant Petroleum Company was in violation of the regulations," instead of "when the violation actually began." This comports with the INC form (Form 3160-9 (May 1987)), which indicates that the time reported on the form was the time when the violation "was found by [BLM] inspectors."

We regard this amendment as a permissible correction of a purely procedural error. In any event, appellant was not harmed by this amendment, as it is the time that drilling commenced, not the time the violation was discovered, that controls whether a violation had occurred and what the assessment should be. Further, the assessment of \$500 (representing drilling

---

6/ By the time the INC was issued (July 11, 1988), the violation had occurred and ended, once and for all. Thus, the only question left was whether an assessment should be made, and the regulations strictly controlled this question, leaving BLM no discretion.

We are aware that, in the way of compliance, BLM did direct Grynberg to provide it with written notice of the action Grynberg would take in the future to assure that the problem would not recur. However, this was clearly gratuitous, as it was most unlikely that drilling without an approved APD would recur at this well, since the APD had been approved.

without an APD for part of 1 day) would have applied even if the original time indicated on the INC (12 noon) were regarded as the time that drilling commenced.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

David L. Hughes  
Administrative Judge

I concur:

---

Charles B. Cates  
Director, Ex Officio Member